

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD A. CASE,

Plaintiff,

v.

TERI HANSEN, et al.,

Defendants.

CASE NO. C05-2073-JCC

ORDER

This matter comes before the Court on Plaintiff's Objection to Denial of Motion to Stay Summary Judgment Pending Additional Discovery (Dkt. No. 47), Plaintiff's Request for Enlargement of Time (Dkt. No. 48), and the Report and Recommendation of United States Magistrate Judge Mary Alice Theiler ("R&R") (Dkt. No. 46). Having reviewed the materials submitted and found that oral argument is not necessary, the Court AFFIRMS the Denial of Discovery, REJECTS the Request for Enlargement of Time, and AFFIRMS the R&R.

I. BACKGROUND

On January 13, 2006, *pro se* Plaintiff Richard A. Case filed a claim under 42 U.S.C. § 1983 alleging punitive treatment while he was detained prior to his trial for first-degree murder. (Dkt. No. 6.)

1 The discovery deadline was May 30, 2006. (Dkt. No. 16.) Defendants filed for summary judgment on
2 July 31, 2006. (Dkt. No. 22.) Plaintiff had trouble accessing his legal materials, and subsequently filed
3 for and received four extensions of time to file his response. (Dkt. Nos. 28, 32, 38, and 40.) His fourth
4 filing was actually a request to stay summary judgment pending additional discovery under Fed. R. Civ.
5 P. 56(f). (Dkt. No. 39.) On February 28, 2007, Judge Theiler granted a fifth and final extension of the
6 deadline to respond to the summary judgment motion to March 30, 2007, and denied Plaintiff's request
7 to stay summary judgment pending discovery, noting that the discovery deadline had passed eight months
8 prior. (Dkt. No. 43). She later denied his sixth request for an extension. (Dkt. No. 45.) As of March
9 30, 2007, Plaintiff failed to file a substantive response to the summary judgment motion and Judge Theiler
10 issued an R&R granting summary judgment to Defendants. (Dkt. No. 46.) Plaintiff now files an
11 objection to the denial of the stay of summary judgment pending additional discovery under Rule 56(f)
12 (Dkt. No. 47) and a request for additional time to file a response to summary judgment (Dkt. No. 48).

14 **II. ANALYSIS**

15 **A. Denial of Discovery**

16 On February 1, 2007, Plaintiff filed a request under Fed. R. Civ. P. 56(f) to stay summary
17 judgment until additional discovery was conducted. Judge Theiler denied Plaintiff's request, holding that
18 he failed to diligently pursue discovery. Judge Theiler noted that the discovery deadline was May 31,
19 2006, and that Plaintiff had failed to request a continuance in the eight months prior to this request.
20 Plaintiff stated that he missed the deadline because he was representing himself in a murder trial at the
21 time. The Court notes that Plaintiff's criminal trial ended on June 9, 2006, seven months prior to his
22 request to conduct discovery. (Pl.'s Objection to Denial of Disc. (Dkt. No. 47).)

23 The Court reviews the Magistrate Judge's nondispositive orders for clear or legal error. FED. R.
24 Civ. P. 72(a). A Rule 56(f) request may be denied if the party requesting a continuance did not seek
25 discovery diligently. *See, e.g., Mackey v. Pioneer Nat'l Bank*, 867 F.2d 520, 523–24 (9th Cir. 1989).

1 Plaintiff asks the Court to look to *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004) for support for his
2 request to stay summary judgment, but the Court in that case found that Plaintiff had been diligent. *Id.* at
3 930. In *Jones*, the plaintiff not only served a set of interrogatories before the discovery deadline, he
4 timely moved to extend discovery. *Id.* *Jones* is thus distinguishable from the instant case, where Plaintiff
5 failed to file any requests for discovery or for an extension of the discovery period until eight months
6 after the discovery deadline had passed. Although *pro se* litigants are held to less stringent standards,
7 *Haines v. Kerner*, 404 U.S. 519 (1972), this Court has been extremely lenient with Plaintiff and an
8 additional extension of time is unwarranted even in light of his *pro se* status. The Court finds that the
9 Magistrate Judge did not commit clear error in denying Plaintiff's request for failure to diligently pursue
10 discovery, and AFFIRMS the denial of discovery.

11 **B. Request for Enlargement of Time**

12 On April 5, 2007, Plaintiff filed a motion to extend the deadline to file a response to Defendants'
13 motion for summary judgment. (Dkt. No. 48.) The Court can either construe this as a motion for review
14 of the Magistrate Judge's denial of Plaintiff's sixth request for additional time (Dkt. No. 45) or as a
15 request for extension of time in which to file objections to the R&R. Either way, the Plaintiff's motion is
16 unpersuasive. If Plaintiff's motion is characterized as a request for review of the Magistrate Judge's denial
17 of his extension request, the Court finds the Magistrate Judge committed no clear error in denying the
18 request. If Plaintiff's motion is construed as a request that the Court grant him an additional ten days to
19 file objections, the Court denies this extension in light of the many previous extensions already given to the
20 Plaintiff. The Court also notes that more than ten days have passed since his objections to the R&R were
21 due, and Plaintiff has still not substantively responded. Additional time to respond is thus uncalled for.

22 Plaintiff bases his request on the fact that this Court has not yet ruled on his objection to the
23 Magistrate Judge's denial of his motion to stay summary judgment pending additional discovery under
24 Rule 56(f). This reasoning is unpersuasive. Litigants must continue to meet deadlines while waiting for
25 rulings on nondispositive motions.

1 Further, Plaintiff was already given five extensions on the deadline to file a summary judgment
2 response and still failed to respond. Plaintiff acknowledges that this sixth motion for an enlargement of
3 time is “an absurd request in light of all extensions already granted.” (Dkt. No. 48.) The Court agrees.
4 The Motion is DENIED.

5 **C. Report and Recommendation**

6 The Court, having reviewed Defendants’ motion for summary judgment, all submissions from
7 Plaintiff thereto, and the Magistrate Judge’s R&R, and having noted that Plaintiff did not file any
8 substantive objections, hereby ADOPTS the R&R and GRANTS summary judgment to the Defendants.
9

10 **III. CONCLUSION**

11 For the foregoing reasons, the Court AFFIRMS the denial of discovery, REJECTS the request for
12 enlargement of time, and AFFIRMS the R&R. The Defendants’ motion for summary judgment is
13 GRANTED and this matter is DISMISSED with prejudice.

14 SO ORDERED this 14th day of May, 2007.
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18 John C. Coughenour
19 United States District Judge
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